SUPREME COURT, U. S.

In the Supreme Court of the United States

OCTOBER TERM, 1971

RAYMON CAAMANA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-649

RAYMON CAAMANA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Southern District of New York, petitioner was convicted of concealing heroin in violation of 21 U.S.C. (1964 ed.) 174. He was sentenced to imprisonment for five years. The court of appeals affirmed without opinion (Pet. App.).

The evidence showed that in May 1969, an informant told a federal narcotics agent in New York City that he was negotiating to buy heroin from pe-

titioner, whom he knew as "Fif" (App. 53a).[1] The informant had identified petitioner's photograph as that person, had given the agents the license number of petitioner's automobile and had provided the officers with a phone number which they were thereafter able to identify as belonging to petitioner (App. 56a-57a). The agent asked the informant, who had been used in the past,[2] to arrange the purchase (App. 55a). On the evening of May 27, 1969, the informant told the federal agents that he had ordered one-eighth of a kilogram of heroin from petitioner and that the latter would telephone him to set the time and place for the sale (App. 53a, 57a). At 11:30 the following morning, with an agent listening in, the informant received a call from a man who identified himself as "Fif" and said that he would meet the informant at 2:00 p.m. at "the usual place" (App. 17a, 58a-59a). The informant explained to the agents that this meant the corner of East 60th Street and Lexington Avenue in Manhattan (App. 59a). Petitioner's apartment and automobile were then under surveillance (App. 18a-19a). At 12:30 p.m. the agents observed petitioner leave his residence on East 115th Street and

---

[1] "App." refers to appellant's appendix in the court of appeals, a copy of which we are lodging with the Clerk of the Court.

[2] In April 1969, the same informant had told agents that heroin could be found in a certain New York apartment. When a warrant for this apartment was obtained and a search conducted, no narcotics were discovered, but glassine envelopes and rubber bands were found, and the owner of the premises admitted that he had been selling narcotics (App. 61a-65a).

drive south on Second Avenue. They attempted to follow petitioner's car, but lost it in traffic (App. 19a-20a). The agents proceeded to 60th Street and Lexington Avenue, where, at the appointed time, they saw petitioner turn off Lexington on to 60th. When petitioner stopped for a red light at the end of the block, the agents placed him under arrest. The officers immediately began to search the car but, when a large crowd gathered, they removed the vehicle to the New York headquarters of the Bureau of Narcotics and Dangerous Drugs (App. 21a). At this location, the agents resumed the search and discovered approximately one-eighth of a kilogram of heroin hidden under the left rear fender of the automobile (App. 22a, 32a, 52a). This heroin was received into evidence at trial (App. 22a).

There is no merit to petitioner's contention that there was no probable cause for the arrest and search. Here, as in *Draper* v. *United States*, 358 U.S. 307, the informant's story that petitioner would sell him heroin was detailed and corroborated by events observed by officers prior to the search. That "Fif" was petitioner had been made clear by virtue of the precise information provided by the informant. After the agents had requested the informant to arrange to purchase heroin from petitioner, the informant told them that petitioner would telephone him to set up a rendezvous. Thereafter, as stated, the informant received a telephone call from "Fif"—which an agent overheard—arranging a 2:00 p.m. meeting at the "usual place," which the informant told the agents meant

60th and Lexington. When the officers saw petitioner arrive at that intersection at the appointed time, the informant's detailed information was sufficiently corroborated to justify the arrest and search. Since the agents had probable cause to search the automobile at that time, the subsequent search of the car at headquarters, made necessary by the conditions existing at the time the automobile was stopped, did not require a warrant. *Chambers* v. *Maroney*, 399 U.S. 42, 52.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1971.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1971 451810 355